

November 15, 2007

Secretary of State Debra Bowen
1500 11th Street
Sacramento, California 95814

Re: Los Angeles County's Voting Systems

Dear Secretary Bowen:

We are writing to raise concerns about your October 25, 2007 decertification of Los Angeles County's ES&S InkaVote Plus optical scan voting system and the conditions placed on reapproval of the Diebold Accuvote TSX touchscreen direct record electronic (DRE) voting machines, which are used in Los Angeles for early voting. We are specifically concerned about the disproportionate impact of these orders on voters with disabilities and voters with language needs in Los Angeles County – two historically disenfranchised constituencies.¹

Although we appreciate security concerns about voting systems in California, we urge you not to overlook accessibility issues as you review Los Angeles County's voting systems.² First, Los Angeles County's unique demographics – the largest population of people with disabilities and people with language assistance needs of any county in the United States – must be taken into account when deciding which voting systems and procedures will be used. Second, federal laws require that Los Angeles County use disability and language accessible voting systems. Section 301 of the Help America Vote Act requires that voters be able to cast a private and independent vote and also requires at least one direct recording electronic voting system or other voting system that is accessible for individuals with disabilities at each polling place. The Voting Rights Act requires Los Angeles County to provide bilingual assistance in the following 6 languages in addition to English: Spanish, Chinese, Japanese, Korean, Tagalog, and Vietnamese.

Although far from perfect from an accessibility standpoint, the InkaVote Plus used on Election Day and the Diebold touchscreen machines used for early voting, allow thousands of Los Angeles voters with disabilities and who need language assistance to cast a private and independent vote. With only two-and-a-half months until the Presidential Primary election on February 5, 2008, the decertification of InkaVotePlus and the conditions placed on the reapproval of Diebold leave Los Angeles in a precarious situation. It is unclear how these constituencies will vote privately and independently as required by law.

In order to avoid disenfranchising thousands of voters, we ask that you do the following:

- Re-certify Los Angeles County's InkaVote Plus voting system for use in conjunction with the Diebold DRE touchscreen voting system at least through the February 2008 primaries. InkaVote Plus provides a level of accessibility that, while minimal and far

¹ Study after study has shown that the brunt of Election Day challenges tends to fall most heavily on low income communities, people with disabilities, ethnic minority communities, and language minority communities.

² See Protection & Advocacy, Inc.'s letters dated July 30, 2007 and August 28, 2007.

from perfect, is vastly preferable to the prospect of Los Angeles County conducting elections using a paper-based system that lacks any accessibility component.

- Work with Los Angeles County to implement the recommendations of the July 26, 2007 Accessibility Review Report, such as improving poll worker training, placing voting systems on tables that meet the height and width standards for wheelchair accessibility, and running public service announcements.
- Re-consider the condition requiring 100% manual tally requirement during the canvassing period for Diebold touchscreens. We believe this requirement is an onerous requirement that potentially makes it impossible for Los Angeles to conduct an early voting program.

We believe this will help ensure that, at least in the short term, Los Angeles County elections will be accessible to voters with disabilities and who need language assistance.

In the long-term, we ask that you do the following:

- Provide Los Angeles County with clear guidelines for the development of a long-term replacement for InkaVote Plus, which was meant to be a transitional voting system.³
- Work with organizations that represent and serve voters with disabilities and voters with language needs.

³ Inka-Vote Plus was always supposed to be a transitional system. After the passage of the Help America Vote Act (HAVA) and California's adoption of the voting standards necessary to comply with HAVA, jurisdictions were required to convert their voting systems to ones that would be accessible to all voters, particularly those with disabilities and who needed language assistance. Given its size and diversity of needs, Los Angeles County made a decision not to spend all of its HAVA dollars on a conversion to fully accessible voting systems, opting instead to supplement Ink-a Vote with precinct ballot scanners and an audio assistance tool. The combination of these transitional systems has been labelled, "Inka-Vote Plus." The decision to opt for such a transitional system was partly based on a desire to wait for new voting technology to improve and for the evolving standards being set by the state and federal government to stabilize.

The following considerations inform the requests that this letter outlines:

A. InkaVote Plus addresses some, but not all, of the barriers posed by paper ballots and the stand-alone InkaVote system

1. By itself, InkaVote is not accessible to voters with disabilities or LEP voters^{4,5}

ES&S InkaVote is an optical scan system. The voter must use a “stylus” or marker to create an ink blot on the paper ballot. The ballot is a long card with columns of numbers and corresponding blank “bubbles.” If the voter is casting a ballot at a poll site, the voter may slide the ballot card into a plastic holder with pages on which the contests and candidates are printed in English only. The voter is supposed to line their stylus with their ballot choice, and push the stylus through the corresponding hole, which will cause the marker to be exposed and should create an inkblot over the numbered bubble. These processes are a barrier for voters with blindness and low vision because they cannot “see” the paper ballot and a barrier for voters with

⁴ In March 2004, Los Angeles County Registrar of Voters was sued because of the inaccessibility of the InkaVote system by the Disability Rights Legal Center and other advocates in the case AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES (AAPD) et al. v. KEVIN SHELLEY, as Secretary of State for the State of California; CONNY MCCORMACK, as Registrar of Los Angeles County, et al, CV04-1526 FMC (PJWx).

⁵ Protection & Advocacy, Inc. has consistently documented InkaVote disability access concerns. Some of these concerns were raised in its February 2006 letter to the Secretary of State:

- ❑ There are several problems with the ability of people with physical/mobility and dexterity/grip strength disabilities being able to vote independently and privately, especially relating to :
 - Manipulating and inserting the ballot into the voting system (as well as into the separate tabulation system) can be difficult for persons with manual dexterity and/or grip strength disabilities.
 - The strength required to remove the printed ballot was surprisingly more than I had expected, and could be difficult for persons with dexterity and grip strength disabilities.
 - Although the system includes a “privacy sleeve” which mitigates the privacy issue somewhat, many voters would still require assistance to use this system and could therefore not vote independently.
 - The question remains how these systems can assure privacy for voters who cannot manipulate the privacy sleeve independently, including instances where the voter needs to vote curbside.
- ❑ The audio feature included both pre-recorded human voice and a synthesized voice that were at different loudness levels so a voter may need to adjust the sound up and down to hear adequately.
- ❑ The audio speed is not variable.
- ❑ Voters using the audio systems do not get immediate audio verification of their vote at the time each selection is made and therefore cannot change their vote at that time, but must instead wait until the end of the voting process to verify their votes.
- ❑ The height of the tabulator device is not variable, so people of short stature or with limited reach may need assistance to insert the ballot to cast their vote.

manual dexterity disabilities who have difficulty holding objects such as paper or a ballot marker.

In addition, voters with language assistance needs struggle to mark the correct bubbles corresponding to their vote choice because the pages in the plastic holder are in English only. Pollsite monitors have regularly reported voters struggling to use the recorders, make a mark properly, or be able to check that their marks matched their choices.

2. InkaVote Plus, however, is minimally accessible for voters with blindness and low-vision and LEP voters but not for voters with manual dexterity disabilities.

The InkaVote Plus system includes one audio voting station which provides a keyboard and audio assistance for voters who are blind or have low-vision disabilities. This audio component also provides a ballot for LEP voters in the seven VRA required languages. Because of its audio voting station component, InkaVote Plus provides a minimal level of accessibility for voters who are blind or have low-vision disabilities, or who are limited English proficient. However, voters with manual dexterity disabilities can not manipulate the paper or stylus and require assistance to vote. Thus voters with manual dexterity disabilities can not vote independently and privately on InkaVote Plus.

B. Accuvote touchscreen machines address some, but not all, of the barriers posed by paper ballots for voters with blindness and low-vision disabilities. The touchscreens provide enhanced accessibility for limited English proficient (LEP) voters.

1. Accuvote touchscreens provides access for voters with blindness and low-vision but not voters with manual dexterity

For voters with blindness or low-vision disabilities, the Accuvote touchscreen has an audio component which makes the voting process accessible to voters with blindness and low-vision disabilities. However, to use the touchscreen, voters must place a card into a slot in the machine. This process is not accessible for people with manual dexterity disabilities.

2. Accuvote touchscreens provide enhanced accessibility for LEP voters

When an LEP voter votes in an Los Angeles County-run election, the poll site may have no bilingual poll workers, no translated sample ballots, and essentially no way for the voter to cast a meaningful ballot. If the poll site happens to have a translated sample ballot in the LEP voter's native language (and we know from poll monitoring experience that not all do, even the ones that are supposed to), the LEP voter must try to align the text of his or her translated sample ballot with the English-only sample ballot pages of the InkaVote machine and try to mark the appropriate spot. In contrast, when an LEP voter votes on a touchscreen machine, he or she has a choice to see the entire ballot in his or her native language, with translated instructions and prompts, from the first screen. Even if the poll site lacks translated sample ballots, the LEP voter can still see the ballot in his or native language on the touchscreen interface. In addition, LEP voters who are unable to read have the choice to listen to the ballot over audio playback. LEP voters can vote with the same ease and access as other voters.

For voters with language assistance needs, the Accuvote touchscreen allows voters to select the language of their choice from the first screen and see all their ballot options in that language.

Additionally, LEP voters who have blindness or low-vision disabilities, or who are illiterate, can listen to the entire ballot and all instructions in English, Spanish, Chinese, Japanese, Korean, Tagalog, and Vietnamese.⁶

C. The conditions for recertification jeopardize ballot access for thousands of voters with disability and language needs and put at risk their ability to vote privately and independently.

We believe the conditions placed on Los Angeles to use its InkaVote Plus system and its touchscreens may be so onerous as to force the county to minimize or eliminate election services that are vital to voter access, such as early voting. The elimination of early voting would disenfranchise thousands of voters with disabilities and voters with language needs. For example, the 100% manual tally requirement during the canvassing period (within 29 days of Election Day) for Accuvote touchscreens will make it logistically difficult for Los Angeles County to conduct its early voting program given that tens of thousands of Los Angeles voters vote by touchscreen early voting during major elections. In November 2006, 60,000 LA voters cast ballots at early voting sites. We have not seen a showing that a lesser manual tally requirement would not achieve the same security goals that your office. Given the negative implications that the 100% manual tally requirement has for Los Angeles County's early voting program, we ask that you reconsider your manual tally requirement and ensure that the recertification conditions allow Los Angeles County to conduct an early voting program.

* * * * *

Decisions regarding our election system must be based on an open discussion with election officials, organizations with decades of poll monitoring experience, and individual stakeholders. When you served as the Chair of the Senate Elections Committee, we were impressed by your depth of knowledge, willingness to engage, and commitment to an open and transparent process. As the Secretary of State, those qualities are all the more important as you work to set statewide policies on elections and voter engagement.

We are all committed to the same principles of broadening the participation of our electorate while preserving the integrity of our elections. We want to be involved in discussions to find the right balance of these principles. Along these lines, we urge you to re-convene the Secretary of State's Voter Accessibility Advisory Committee. Moreover, we also urge you to re-engage with county Boards of Supervisors and election officials, upon whom the responsibility of administering the election falls.

⁶ In an exit poll conducted by the Asian Pacific American Legal Center (APALC) at the Monterey Park early voting site, Asian Pacific Islander (API) voters reported finding the electronic voting machines easy to use. Of the voters surveyed, 77% identified as API, and 64% identified their native language as an Asian language for which Los Angeles County is covered under Section 203. Overall, 79% of the voters surveyed preferred touchscreen voting over InkaVote and punchcard voting.

We look forward to working together on shaping a solution for Los Angeles County that ensures the broadest participation of our electorate and protects the integrity of our elections.

Sincerely,

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